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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

DATE: AUG 0 9 2012 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a physician specializing in cardiology, and is an interventional fellow at Detroit Medical Center, affiliated with Wayne State University (WSU). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on May 17, 2011. In an introductory statement, counsel stated that the petitioner's occupation, cardiology, is plainly of substantial intrinsic merit, and that the petitioner's work has national scope in part because he has disseminated his work through publication and presentation. The director did not contest either of these points, and they require no further discussion here.

Counsel did not claim that the petitioner's daily duties included medical or scientific research. Rather, counsel stated that the petitioner's "work has been published in major medical journals, a rare achievement for a pure clinician."

Counsel contended that "labor certification is inappropriate" in this instance, because:

> An employer wishing to sponsor [the petitioner] through labor certification would be required to articulate the minimum requirements for the position. . . . [The petitioner] is not sought after for his minimum qualifications and there are minimally qualified applicants who can perform the minimal duties of the position. A hospital would want [the petitioner] because his reputation for high success rates will attract more patients, will improve the institution's mortality and morbidity statistics, and will enable the institution to grow in national rank. These are not qualities found in . . . minimally qualified experts, but the qualifications of an extraordinary expert.

A given hospital's desire "to grow in national rank" relative to other United States hospitals is not a national interest issue. Counsel does not explain why it would be in the national interest for Detroit Medical Center to outrank, for example, Brigham and Women's Hospital, rather than the other way around. Improved patient outcomes would unquestionably be in the interest of the patients concerned, and would enhance the reputation of the hospital, but this benefit is local rather than national in scope, limited by the number of patients that the petitioner can effectively treat.

Counsel added that, should the petitioner seek to split his services between employers, he would have no single full-time employer to seek labor certification on his behalf. The record does not indicate that the petitioner has ever worked under such circumstances in the United States, showing that he has been able, at least for the time being, to work full-time for a single employer. The AAO notes that an alien who immigrates through labor certification is not permanently bound to the sponsoring employer for the duration of his or her career. After adjustment of status, an alien physician may work for multiple employers with or without a national interest waiver. Counsel has not shown that it is a matter of national interest for the petitioner to split his employment as soon as possible, rather than continue working for one employer, as he has done, for the length of time it would take to obtain labor certification and adjust to lawful permanent resident status. The petitioner's hypothetical preferences in this regard do not support the conclusion that "labor certification is inappropriate." Furthermore, the assertion that the petitioner must be free to work for as many institutions as he wishes contradicts the claim that it is in the national interest for him to remain at Detroit Medical Center and thereby enhance its reputation.

Counsel claimed that the petitioner "is heralded as an extraordinary clinician in his field," and that his "**higher success rates and . . . reputation as a leading expert in myocardial injury in thrombotic thrombocytopenic purpura . . . makes him a valuable asset to any institution fortunate enough to retain his services**" (counsel's emphasis). Counsel asserts that "numerous independent letters of support" establish that the petitioner has earned "sustained national acclaim."

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, it is necessary to examine the evidence of record, to see how well it supports counsel's claims.

With respect to counsel's claim of "numerous independent letters of support," the "Support Letters" section of the initial submission included three witness letters, all dated January or February 2010, more than a year before the May 2011 filing date. All three witnesses attended Pontificia Universidad Catolica Madre y Maestra (PUCMM) in the Dominican Republic, where the petitioner earned his medical degree between 1995 and 2001.

All three witnesses also trained at WSU, two of them at the same time as the petitioner. Those same two witnesses claimed no training or expertise in cardiology.

[redacted], now infectious disease attending physician and clinician educator at Yale University School of Medicine, graduated from PUCMM in 2000, the year before the petitioner, and served as an intern and resident at WSU from 2003 to 2007. The petitioner trained at WSU from July 2004 to June 2007. The letter he signed included an example of the petitioner's clinical work, which began: "While working at the [insert name of hospital]. . . ." The bracketed phrase "[insert name of hospital]" raises serious questions about the authorship and origin of the letter, because whoever wrote the letter clearly did not know where the incident occurred. [redacted] signed the letter without removing this phrase, which raises the question of how carefully he actually read it. This significant issue casts doubt on the letter's credibility and evidentiary weight.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Therefore, serious questions about the origin of any witness letter raise doubts about all of them.

[redacted], now a medical instructor at Duke University, graduated from PUCMM in 1999 and was a chief medical resident at WSU in 2006. Despite counsel's claim that the letters are "independent," [redacted] he acknowledged "collaboration with [the petitioner] in the past." Like [redacted] claimed no training or experience in cardiology. [redacted] stated that the petitioner's "research at the Loma Linda University Medical Center (LLUMC) will continue to improve the medical community's understanding of various cardiology and hematology conditions affecting Americans." [redacted] continued: "[the petitioner] is one of a select group of physician-scientists who practices medicine and conducts research, thereby achieving a title bestowed upon only the best in the field." By the time the petitioner filed the petition, the petitioner had left LLUMC to become, in counsel's words, "a pure clinician" at Detroit Medical Center. The record contains no evidence to support the claim that "only the best in the field" conduct research and practice clinical medicine at the same time. The available evidence appears to indicate that such research is a routine element of advanced medical training. [redacted] also made the equally unsupported claim that "[o]nly the foremost authorities in any given field are asked to act as external reviewers for the major journals."

[redacted] associate professor at the University of Alabama at Birmingham, is somewhat older than the other witnesses, having graduated from PUCMM in 1992 and trained at WSU from 1995 to 1998. [redacted] is the only initial witness to claim board certification in cardiology. [redacted] stated that the petitioner's "research contributions to the field of cardiovascular medicine have been nothing short of extraordinary," and that his "work will continue to advance the field of cardiovascular medicine." [redacted] claimed that one of the petitioner's research projects "changed the way many echocardiogram interpreters at tertiary cardiac centers throughout the U.S. evaluate cardiac ultrasounds in heart transplant recipients." If this is true, then the petitioner's work has had a significant national impact, but the record contains no primary evidence to support this vaguely-worded claim.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility,

there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The letters considered above contain what appear to be highly exaggerated claims about, for instance, the rarity and significance of performing research while also practicing medicine. Unsupported claims of fact do not take on greater weight simply because they originate from a witness rather than from the petitioner himself.

The petitioner submitted a printout from Google Scholar (http://scholar.google.com), showing six independent citations of one of the petitioner's articles. (The printout shows seven items, but two of them are the same article, listed twice.)

Elsewhere in the record, the petitioner submitted three letters (also dating from early 2010) from individuals involved in the petitioner's training. [redacted] is an [redacted] at Loma Linda University School of Medicine and chief of the Cardiac Catheterization Laboratory at [redacted] where the petitioner previously served as chief cardiology fellow. [redacted] stated: "I cannot overestimate the importance of having the services of such an extraordinary cardiology specialist as [the petitioner] treating our veteran population."

The USCIS regulations at 8 C.F.R. § 204.12 spell out the means by which an alien physician can qualify for a national interest waiver by agreeing to work at a medical facility under the jurisdiction of the Department of Veterans Affairs (VA). [redacted] asserted that the petitioner would serve the national interest by serving at [redacted] VA Medical Center, but the record contains none of the documentary evidence (such as an employment commitment letter from a VA facility) necessary to meet the applicable regulatory requirements. Absent this required evidence, it cannot suffice simply to assert that a VA facility would benefit from the petitioner's work. Furthermore, there is no other evidence in the record that the petitioner intends to work at any VA facility, or that any such facility intends to employ him (rather than temporarily oversee part of his training).

[redacted], [redacted] at LLUMC, contended that the petitioner "is a physician at the top of his field" whose "international reputation . . . secured his prestigious position at" LLUMC. The record contains no evidence that the petitioner's "prestigious position" at LLUMC was anything other than a routine, short-term training position.

[redacted], [redacted] for Graduate Medical Education at WSU, asserted that the petitioner is "a physician scientist of superior ability in adult cardiovascular medicine" and "a recognized authority in cardiovascular medicine." [redacted] described various research projects which, she claimed, have earned the petitioner "a stellar reputation as a leading authority in cardiovascular medicine." If the petitioner's reputation were indeed of such a caliber, then it is reasonable to expect evidence of it beyond statements from the petitioner's own mentors and alumni from his medical school.

On September 8, 2011, the director issued a request for evidence. The director informed the petitioner that the submitted evidence was not sufficient to establish eligibility for the national interest waiver. In response, counsel stated: "we respectfully request the pending petition to be reviewed on its merits."

The director denied the petition on November 30, 2011. The director listed many of the materials submitted with the petition, including the petitioner's published and presented work, and concluded that the materials do not self-evidently distinguish the petitioner from his peers to a sufficient extent to warrant granting the special benefit of the national interest waiver. The director found that the witness letters contained "dramatic and hyperbolic language," praising the petitioner's ability to perform routine procedures as evidence of his ascension to the pinnacle of his field.

On appeal, counsel contends that "the impact of [the petitioner's] work has spread beyond his hospital community and had a significant national influence in improving healthcare." Counsel does not elaborate or cite any evidence to support this vague claim. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the petitioner will benefit the national interest by performing medical research. Performing research does not guarantee approval of the waiver, because researchers generally fall under the statutory job offer requirement. Furthermore, counsel's new assertion that the petitioner "desire[s] to combine clinical care with research" contradicts the previous assertion that the petitioner is "a pure clinician." Counsel's appellate statement places a much heavier emphasis on research than did counsel's introductory statement. This significant shift amounts to a material change in the petitioner's claimed future activities. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

More fundamentally, the record simply does not offer objective support for counsel's claim that the petitioner's past research has had "tremendous national impact," or that his "record of publication and citation by later researchers is very impressive." The petitioner has submitted no objective, credible evidence that he stands apart from other recently-trained physicians who performed research as part of their training. The petitioner, through counsel and various witnesses, has simply described his work and then declared it to be of unparalleled importance. Unsupported claims cannot establish eligibility for the national interest waiver, regardless of the scale of those claims, and regardless of whether the petitioner makes the claims himself or has witnesses do so on his behalf.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.